

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT HUGHES,	§
	§ No. 684, 2009
Petitioner Below,	§
Appellant,	§ Court Below – Family Court
	§ of the State of Delaware,
v.	§ in and for Kent County
	§ File No. CK06-20172 and
JENNIFER HUGHES,	§ 07-08962
	§
Respondent,	§
Appellee.	§

Submitted: January 26, 2011

Decided: February 1, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, **BERGER**, **JACOBS** and **RIDGELY**, Justices (constituting the Court *en Banc*).

O R D E R

This 1st day of February 2011, it appears to the Court that:

1) The petitioner-appellant, Robert Hughes (the “Husband”) and the respondent-appellee, Jennifer Hughes (the “Wife”) were married on July 4, 1995, and had two children: NH, born October 22, 2000 and JH, born December 14, 2002. NH was diagnosed with autism about October, 2002. The Husband and the Wife were divorced on October 6, 2006.

2) Soon after the divorce, the Husband discovered that the Wife had deceived him and he was not NH’s biological father. Before this discovery, the Husband had what the Family Court described as a “laudable

and fatherly affection and attachment to NH.” After this discovery, however, the Husband sought to sever all relationships between NH and himself solely on the basis that NH is not his biological child.

3) The Husband attempted to reopen the final judgment of the parties’ ancillary divorce proceedings in the Family Court. The purpose of the petition was to disestablish his paternity of NH, a child born during his marriage to the Wife.

4) On May 10, 2007, the Husband and the Wife submitted a Stipulation and Order Regarding Parentage Determination to the Family Court. It stated that the Husband is not the biological father of NH and waives all rights associated with such parentage. Finding that this Stipulation and Order was barred by the relevant statute of repose contained in Delaware’s version of the Uniform Parentage Act, the Family Court rejected the Stipulation and Order in a final judgment.

5) Upon appeal from that judgment, this Court reversed and remanded this matter with instructions for the Family Court to consider the Husband’s constitutional arguments. The Family Court addressed the constitutional questions on remand and also held that the Husband’s arguments were both procedurally nonjusticiable and without substantive

merit. This Court now has before it the Husband's appeal from the Family Court's judgment upon remand.

6) In this appeal, the parties' positions are not adverse. The Husband alleges that he is not the biological parent. The Wife stipulated to the same and previously has agreed to the Husband relinquishing his parental rights to NH. In deciding this matter, the Family Court accepted the parties' representation as a finding of the court that the Husband was not the biological father of NH. On remand to the Family Court, the Wife's position was in harmony with the Husband's position. The parties' accord continues in the present appeal from the decision on remand. The Wife and the Husband make the same legal arguments before this Court, with the Wife's briefs adopting and supporting the Husband's submissions.

7) In the interests of justice, in the absence of adversity between the parties, this Court appointed Michael W. Arrington, Esquire as *amicus curiae*. He was asked to file a brief in opposition to the arguments presented by the Husband. This Court thanks Mr. Arrington for his exemplary *pro bono* service as an *amicus curiae*. It is in accordance with the highest traditions of the Bar of this Court.

8) The record reflects that, consistent with the statute in effect at the time of its original decision, the Family Court properly denied the

Husband's motion to reopen the final ancillary judgment, based upon the applicable two-year statute of repose. On July 30, 2010, during the pendency of this appeal, the Governor signed Senate Substitute 1 (as amended) to Senate Bill 171 into law.¹ The new law amended the Delaware Uniform Parentage Act to provide, *inter alia*, a tolling provision to the prior statute of repose. The current law provides for tolling of the limitation on filing as follows:

(e) Notwithstanding the two-year period of limitation recited in this chapter or other affirmative defenses, an action for parentage may proceed despite a prior adjudication, acknowledgment or presumption of parentage when shown by clear and convincing evidence to be in the best interests of the particular child, and where the prior adjudication, acknowledgment or presumption of parentage was based on fraud or duress or material mistake of fact.²

9) In this appeal, the Husband argues that the change in law has retroactive effect. We agree. Subsection (e) to section 8-606 of the Delaware Uniform Parentage Act removes the procedural bar to the Family Court's consideration of the Husband's motion. Therefore, the Husband may now pursue his paternity disestablishment claim in the Family Court under the revised statute. Consequently, it is unnecessary for this Court to address any constitutional issues.

¹ 77 Del. Laws 456 (2010).

² Del. Code Ann. tit. 13, § 8-606(e).

10) The record reflects and the parties agree that the Wife defrauded the Husband and deceived him into believing he was the biological father of NH. Consequently, upon remand, the determinative issue will be whether it is in the “best interests”³ of NH for the Husband to remain as the legal father of NH when the Husband does not want to maintain any further emotional or financial relationship with NH.

NOW, THEREFORE, IT IS HEREBY ORDERED that this matter is remanded to the Family Court for further proceedings in accordance with the amended statute. Upon remand, this matter should be assigned to a different judge of the Family Court. Jurisdiction is not retained.

BY THE COURT:

/s/ Randy J. Holland
Justice

³ Del. Code Ann. tit. 13, § 722(a).